COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, OCTOBER 6, 2005

JOINT PETITION OF

VERIZON COMMUNICATIONS INC.

and

MCI, INC.

For approval of agreement and plan of merger

CASE NO. PUC-2005-00051

ORDER GRANTING APPROVAL

On April 11, 2005, as supplemented on April 20, 2005, Verizon Communications Inc. ("Verizon") and MCI, Inc. ("MCI") (collectively, "Petitioners"), filed a Joint Petition with the State Corporation Commission ("Commission") requesting approval under Chapter 5 of Title 56 of the Code of Virginia ("Code") (§ 56-88 *et seq.*) ("Transfers Act") of a proposed transaction that will result in the transfer of indirect control of MCImetro Access Transmission Services of Virginia, Inc. ("MCImetro"), to Verizon.

The Joint Petition was filed as a result of an Agreement and Plan of Merger ("Merger Agreement") between Verizon and MCI whereby MCI will be merged into ELI Acquisition, LLC ("ELI"), a Delaware limited liability company, which is wholly owned by Verizon and was created solely to facilitate the merger. ELI will be the surviving entity and will be renamed "MCI, LLC" upon completion of the merger.

MCI is presently the holding company parent of MCImetro, a Virginia public service corporation providing regulated retail local exchange and interexchange telecommunications services in Virginia pursuant to certificates of public convenience and necessity issued by the Commission. Upon completion of the merger, MCImetro is to remain a subsidiary of MCI and become a second-tier subsidiary of Verizon. All certificates held by MCImetro as a regulated subsidiary of MCI will continue to be held by MClmetro.[1]

The Petitioners note that Verizon Virginia Inc. ("Verizon VA") and Verizon South Inc. ("Verizon South") are both subsidiaries of Verizon and are incumbent local exchange carriers in Virginia. Petitioners state that the control of Verizon VA and Verizon South, and the services provided by these Verizon affiliates, will not be affected by the transaction. Petitioners state that the Merger Agreement does not call for the merger of any assets, operations, lines, plants, franchises, or permits of MCImetro with any assets, operations, lines, plants, franchises, or permits of any Verizon entity. Petitioners state that no change in rates, terms, and conditions for the provision of any service is called for in the Merger Agreement and that, to the extent changes are sought at a later date, such changes will be subject to regulatory approvals. Accordingly, Petitioners assert that the merger will not impair or jeopardize the provision of adequate service to the public at just and reasonable rates.

On May 5, 2005, the Commission issued an Order for Notice and Comment that, among other things, established a procedural schedule in this matter. On May 6, 2005, Petitioners requested leave of the Commission to amend the Joint Petition to include the May 1, 2005, second amendment to the Merger Agreement. On May 20, 2005, the Commission issued an order granting Petitioners leave to amend the Joint Petition as requested.

On May 23, 2005, public comments were submitted by Mr. Paul Wayne Terry of Greenville. Mr. Terry addressed whether the proposed merger would impact the handling of inmate collect calls in the Commonwealth.

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[1] References to MCI in this Order Granting Approval encompass MCImetro where applicable.

On June 16, 2005, NTELOS Network Inc., and R&B Network Inc. (collectively, "NTELOS") filed comments. NTELOS states that this proceeding presents the Commission with the unique opportunity to assess the status of competition in the Commonwealth. NTELOS asserts that the record reveals there are significant problems that impact the ability of competitive local exchange carriers ("CLECs") to compete in the local market. NTELOS asserts that Verizon continues to have problems with wholesale billing and directory listings. NTELOS concludes that the Commission should require Verizon to improve service in these areas before approving a merger that is sure to preoccupy Verizon for months to come.

On June 16, 2005, the Commission issued an Order on Motion, which extended the previously established procedural schedule in response to a Motion for Extension of Procedural Schedule filed by the Division of Consumer Counsel, Office of the Attorney General ("Consumer Counsel"). On July 5, 2005, the Commission issued an Order Scheduling Hearing in response to requests for hearing filed by Qwest Communications Corporation of Virginia ("Qwest") and jointly by XO Communications Services, Inc. ("XO"), and DIECA Communications, Inc. d/b/a Covad Communications Company ("Covad") (collectively, "XO/Covad").[2]

On July 18, 2005, Cavalier Telephone, LLC ("Cavalier"), filed comments. Cavalier asserts that the Commission should deny the proposed merger for two reasons: (1) the merger would eliminate one of Verizon's two major retail competitors in Virginia; and (2) the merger would further concentrate Verizon's control of the Virginia wholesale market. Cavalier also states that it adopts, by reference as if fully stated in its comments, the comments filed by its affiliate and the Petition to Deny filed by its trade association on May 9, 2005, at the Federal

[2] On June 16, 2005, XO/Covad timely filed its notice of intent to participate in this case.

Communications Commission ("FCC") in WC Docket No. 05-75. In addition, Cavalier argues that if the Commission approves the proposed merger, it should require as a condition of such approval: (1) the divestiture of MCI's current unbundled network element platform ("UNE-P") customers in Virginia to one or more competitors of Verizon in Virginia; and (2) the divestiture of MCI's current dedicated transport facilities in Virginia to one or more competitors of Verizon.

On July 18, 2005, Cox Virginia Telcom, Inc. ("Cox"), filed comments. Cox states that the practical effect of the proposed merger is a huge shift in the Virginia competitive landscape that will impair or jeopardize adequate service to the public at just and reasonable rates[3] and that will impede the Commission's mandate to "promote competitive product offerings, investments, and innovations from all providers of local exchange telephone services in all areas of the Commonwealth."[4] Cox argues that to minimize this impact, the Commission should adopt specific merger conditions, which are listed below, to protect consumers against the negative effects of such an overwhelming concentration of power and resources in one entity. Cox further asserts that facilities-based CLECs and voice over Internet Protocol service providers cannot provide service without efficient collocation and interconnection with the incumbents' networks to exchange calls between their customers and those of the incumbents – and that it would be naïve to expect that market forces alone will cause Verizon and other Regional Bell Operating Companies to voluntarily provide efficient and nondiscriminatory collocation and interconnection on just and reasonable rates and terms to competitive providers.

Specifically, Cox contends that the Commission should take three steps to help ensure smooth, seamless, and efficient interconnection by CLECs to other carriers on reasonable terms

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[3] *See* Va. Code § 56-90.

[4] Va. Code § 56-235.5:1.

and conditions: (1) the Commission should assist with arbitration as requested by CLECs; (2) the Commission should, as a condition to approving the merger, require Verizon to permit CLECs to adopt interconnection agreements anywhere within the Verizon footprint; and (3) the Commission should, as a condition to approving the merger, require a three-year extension of existing interconnection agreements – with CLECs retaining the unilateral right to terminate such agreements any time within that three-year extended period. In addition, Cox concludes that Verizon's inadequate directory listing process harms both consumers and competitors and that anything diverting Verizon's energy and resources (*i.e.*, the proposed merger) is a threat to making real progress in fixing Verizon's directory listing process and, thus, impairs adequate directory listings to the public. As a result, Cox states that approval of the merger should be conditioned upon Verizon setting aside adequate personnel and resources to implement reforms in its directory listing process that may result from the Commission's investigation of this process in Case No. PUC-2005-00007.

On July 18, 2005, Qwest filed comments.[5] Qwest states that, as presently structured, Verizon's merger with MCI is not in the public interest because it will reduce competition in Virginia, and it will increase the rates paid by carriers, and ultimately the public, for telecommunications services. Qwest asserts that unless the Commission takes action to protect the public interest, these results, which violate §§ 56-90 and 56-235.5:1 of the Code, are inevitable in a proceeding like this where the nation's largest telephone company is acquiring the nation's second largest CLEC. Qwest further contends that these unlawful results become even more inevitable when considered in the context of the pending SBC/AT&T merger in which the nation's second largest telephone company is acquiring the nation's largest CLEC. Qwest states

[5] On June 13, 2005, Qwest timely filed notice of its intent to participate in this case.

that the Verizon/MCI merger will make it far more difficult for Qwest and others to compete in the market for telecommunications services – in Virginia and elsewhere.

Qwest argues that the Commission should deny the proposed merger as currently structured, and that the merger should not be approved under the Transfers Act unless and until Verizon and MCI agree: (1) to divest their overlapping facilities and customers in the Commonwealth; (2) to offer, post-merger, interstate and intrastate special access, private line or its equivalent to other carriers at the lowest rates currently offered by either Verizon or MCI; (3) to not favor, post-merger, the acquired MCI affiliate, any other affiliate, or SBC/AT&T with respect to the terms and conditions under which the post-merger entity provides special access services or any other services; (4) to offer competitors in Virginia any services and facilities that the post-merger entity purchases from other incumbent local exchange carriers ("ILECs") out-of-region, and at the same rates, terms and conditions that it obtains them from those other ILECs out-of-region; (5) to give existing Verizon wholesale customers a "fresh look" right to terminate their contracts following the merger without any termination liability; and (6) to provide stand-alone DSL service on reasonable terms. Qwest further states that the Commission should, together with these conditions, establish specific reporting and enforcement mechanisms to ensure that the post-merger entity adheres to these conditions.

On July 18, 2005, Consumer Counsel filed comments.[6] Consumer Counsel states that in order to approve the Joint Petition, the Commission must, based on a complete evidentiary record, find that adequate service to the public at just and reasonable rates will not be impaired or jeopardized by the proposed merger.[7] Consumer Counsel also asserts that § 56-235.5:1 of the

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[6] On May 20, 2005, Consumer Counsel timely filed notice of its intent to participate in this case.

[7] *See* Va. Code § 56-90.

Code applies to the instant case, that the burden of proof lies with the Petitioners, and that the Commission has authority to impose conditions on its approval of the proposed merger. Consumer Counsel concludes that, in an effort to make certain the proposed merger complies with the statutory standards, the Commission should consider, as it may deem proper and the circumstances warrant, imposing the following conditions on any approval of the Joint Petition: (1) a requirement that the merged company maintain service quality; (2) a requirement that the merged company commit to a minimum level of investment in Virginia telecommunications infrastructure; (3) a requirement that limits, for a period of time, future rate increases under Verizon's Alternative Regulatory Plan; and (4) a requirement that Verizon make any non-price term of any interconnection agreement between Verizon and MCI available to any CLEC, including a requirement that any commercial contract affecting interconnection be filed with the Commission.

On July 19, 2005, XO/Covad filed comments, which include the testimony of William Page Montgomery attached as an exhibit thereto.[8] XO/Covad state that the proposed merger poses a great threat to the public interest in numerous and important ways, that the Joint Petition fails to meet the statutory requirements for approval under §§ 56-90 and 56-235.5:1 of the Code, and that the Joint Petition should be rejected. XO/Covad contend that if Verizon is allowed to acquire MCI and to terminate MCI's independent local activities, retail competition in the mid-size business market will diminish materially and the supply of competitive local facilities and services available on a wholesale basis to Verizon's remaining competitors would be severely undercut. XO/Covad assert that the Commission must engage in a careful analysis of the competitive consequences of the merger in Virginia before taking action on the Joint Petition.

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[8] On July 21, 2005, the Commission issued an order granting XO/Covad's July 19, 2005, motion to accept its comments one-day late.

For example, XO/Covad argue that: (1) with respect to the residential market, Petitioners have not suggested any definition of the "relevant product market" and have not offered evidence in support of their proposed analytical approach; (2) with respect to business services, the availability of competitive alternatives to Verizon's local business services after the conclusion of the proposed merger is less promising than with respect to residential services, especially in the market of users of DS1 and greater services; (3) with respect to wholesale competition in the business market, the acquisition by the carrier with overwhelming capacity advantages over its competitors of the direct horizontal competitor with the next largest available capacity would be a clear threat to competition; and (4) the likelihood of either Verizon or SBC aggressively competing in the other's home territory is almost nil. XO/Covad further assert that, at a minimum, the Commission should mandate all the recommended conditions in Mr. Montgomery's testimony attached to its comments.

On August 12, 2005, the Commission's Staff ("Staff") filed its report on the Joint Petition. The Staff states that it is not convinced that Petitioners have met their burden of proof for the Commission to be satisfied that adequate service to the public at just and reasonable rates will not be impaired or jeopardized by the proposed merger. The Staff suggests that the Commission consider two alternatives. The Staff asserts that the Commission could disapprove the Joint Petition without prejudice for the Petitioners to re-file with additional and sufficient information. Alternatively, the Staff states that the Commission could approve the Joint Petition, subject to appropriate conditions that ensure adequate service to the public at just and reasonable rates will not be impaired or jeopardized. In this regard, the Staff proposes the following conditions: (1) require Verizon VA and Verizon South to file notice with the Commission of their affiliate agreements with MCImetro having an annual value in excess of $250,000 between either Verizon VA or Verizon South and MCImetro for two years; (2) require Verizon's affiliates providing intrastate interLATA long distance service in Virginia to submit revenue monitoring information to the Staff consistent with that required by the Commission's IXC Rules (20 VAC 5-411-10 *et seq.*); (3) require Verizon VA and Verizon South to respond to, and to resolve when possible, Commission complaints within 10 business days; (4) require Verizon VA, Verizon South, and MCImetro to offer and purchase unbundled network elements ("UNEs") and/or interconnection arrangements through interconnection agreements (including interconnection agreements filed with the Commission pursuant to § 252 of the federal Telecommunications Act of 1996), and require the companies to file other commercial interconnection agreements between the companies (outside § 251 obligations) with the Commission; (5) require Verizon VA and Verizon South to file to reclassify ATM and Frame Relay services as Other Local Exchange Telephone Services ("OLETS") under their Alternative Regulatory Plan;[9] (6) require Verizon VA and Verizon South to modify their high capacity UNE impairment wire center analysis (and corresponding availability) required by the FCC in its Triennial Review Remand Order ("TRRO") to reflect MCI as a nonaffiliated fiber-based collocator in Virginia wire centers; (7) require Petitioners to track the merger costs and savings for Verizon VA, Verizon South, and MCImetro for a minimum of three years; (8) deny or defer approval of the proposed merger subject to the FCC and Department of Justice ("DOJ") reviews to allow evaluating the potential impact of any of their merger conditions on Virginia; and (9) require Petitioners to file a report of action with the Commission within 30 days of consummation of the merger.

On August 12, 2005, the Staff, by counsel, also filed a memorandum of law regarding the applicability of § 56-235.5:1 of the Code to the Transfers Act. The Staff states that the

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[9] Verizon South's ATM is currently classified as OLETS under the Alternative Regulatory Plan. *See* Case Nos. PUC-2004-00092 and PUC-2004-00142.

comments filed by Qwest, Cavalier, Cox, XO/Covad, and Consumer Counsel either explicitly or inferentially maintain that § 56-235.5:1 of the Code is to be applied by the Commission when reviewing the Joint Petition. The Staff asserts that the plain language of § 56-235.5:1 provides that "[t]he Commission, in resolving issues and cases concerning local exchange telephone service under the federal Telecommunications Act of 1996 (P.L. 104-104), *this title*, or both, shall, consistent with federal and state laws, consider it in the public interest to . . ." (emphasis added). The Staff further notes that the Transfers Act, § 56-88 *et seq.*, is unquestionably part of *this title* of the Code as referenced in § 56-235.5:1. Accordingly, the Staff concludes that given the broad language of the enactment, unless there is a specific reason to exclude the application of § 56-235.5:1 of the Code, then it must be applied to Transfers Act proceedings.

On August 26, 2005, Petitioners filed a response, which includes statements from Margaret C. Hallbach and William E. Taylor attached as exhibits thereto. Petitioners assert, among other things, that: (1) § 56-235.5:1 of the Code does not import a "public interest" requirement into the Transfers Act; (2) Petitioners have met their burden of proof that the transaction will neither impair nor jeopardize adequate service at just and reasonable rates; (3) none of the Staff's or Consumer Counsel's proposed conditions is necessary for the Joint Petition to meet the statutory standard; (4) the various wholesale issues raised by CLECs in this case are either outside the Commission's jurisdiction or properly addressed in a different forum; and (5) none of the competitive harms to competition raised by the CLECs will jeopardize adequate service at just and reasonable rates.

The public evidentiary hearing was held on September 1, 2, 6, and 9, 2005. Lydia R. Pulley, Esquire, Jennifer McClellan, Esquire, and Thomas A. Clare, Esquire, appeared on behalf Verizon. Michelle Painter, Esquire, Dulaney L. O'Roark, III, Esquire, and Eric M. Page, Esquire, appeared on behalf of MCI. C. Meade Browder, Jr., Esquire, and Ashley Beuttel, Esquire, appeared on behalf of Consumer Counsel. JoAnne L. Nolte, Esquire, Kiva Bland Pierce, Esquire, Barbara J. Brohl, Esquire, Lynn Anton Stang, Esquire, and Robert C. Brown, Esquire, appeared on behalf of Qwest. Anthony Hansel, Esquire, appeared on behalf of Covad. Harry Davidow, Esquire, and Jason R. Karp, Esquire, appeared on behalf of XO. Robert M. Gillespie, Esquire, and Raymond L. Doggett, Jr., Esquire, appeared on behalf of the Staff.

Martin Clift, Vice President of Regulatory Affairs for Cavalier, testified as a public witness. Robert W. Woltz, Jr., President of Verizon in Virginia, William E. Taylor, Senior Vice President of NERA Economic Consulting, and Margaret C. Hallbach, Vice President – Mass Markets Strategy & Business Development for MCI, testified on behalf of Petitioners. Charles L. Ward, Vice President, Public Policy of Qwest Services Corporation, testified on behalf of Qwest. Don J. Wood, a Principal of Wood & Wood Consulting, Inc., testified on behalf of XO. Robert C. Dalton, Manager of Regulatory Analysis in the Commission's Division of Public Utility Accounting, Farris M. Maddox, Principal Financial Analyst in the Commission's Division of Economics and Finance, Penny Sedgley, Principal Research Analyst in the Commission's Division of Economics and Finance, Amy Gilmour, Telecommunications Competition Specialist in the Commission's Division of Communications, Steven Bradley, Deputy Director in the Commission's Division of Communications, and Kathleen Cummings, Deputy Director in the Commission's Division of Communications, testified on behalf of the Staff.

On September 9, 2005, Cavalier filed a Motion for Leave to Intervene for Limited Purpose, Motion to Strike from Evidence, and Motion to Initiate Investigation. Cavalier states that it seeks redress for the improper use in this proceeding of its confidential and proprietary data by the Petitioners. Cavalier states that it learned in the previous day or two that the Petitioners seem to have relied improperly upon line count information and other data from the 911 and E911 databases. Cavalier contends that it provided such information to Verizon under contractual restrictions contained in its interconnection agreement and that its misuse is a violation of the interconnection agreement and most likely also a violation of the Virginia Uniform Trade Secrets Act.[10] Thus, Cavalier requests that the Commission grant it leave to intervene for the limited purpose of halting the Petitioners' misconduct in this case. Cavalier also requests that the Commission strike from the record all evidence derived from Cavalier's confidential and proprietary data provided to Verizon in Verizon's capacity as administrator of the 911 or E911 database. Finally, Cavalier requests that the Commission initiate an investigation into Verizon's use of data from the 911 or E911 database to protect the public interest, protect competition, and prevent the wholesale violation of interconnection agreements and federal and other law.

The following filed post-hearing briefs on September 23, 2005: Petitioners; Qwest; XO/Covad; Consumer Counsel; and the Staff.[11]

NOW THE COMMISSION, having considered the record, the pleadings, and the applicable law, is of the opinion and finds as follows. The Joint Petition is approved subject to the requirements ordered herein.

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[10] *See* Va. Code § 59.1-336 *et seq.*

[11] In addition, Cavalier filed a letter in lieu of post-hearing brief in the event it is permitted to file a post-hearing brief. Cavalier states that it supports, and adopts as fully set forth in its letter, the arguments made in the September 12, 2005, filing by XO.

Transfers Act

Petitioners request approval of the proposed merger under the Transfers Act, § 56-88 *et seq*., of the Code. The General Assembly has set forth the criteria that the Commission must apply in evaluating the Joint Petition under the Transfers Act. Specifically, § 56-90 of the Code states as follows:

> If and when the Commission, with or without hearing, shall be satisfied that adequate service to the public at just and reasonable rates will not be impaired or jeopardized by granting the prayer of the petition, the Commission shall make such order in the premises as it may deem proper and the circumstances require, and thereupon it shall be lawful to do the things provided for in such order. . ..

We must evaluate the Joint Petition, the support therefor, the objections thereto, and the requirements proposed by others according to this statutory criteria. Based on the evidence presented in this case, we find that adequate service to the public at just and reasonable rates will not be impaired or jeopardized by granting the Joint Petition subject to the requirements ordered herein, which we deem proper and the circumstances require.

Some of the participants also contend that the Commission must separately find that the Joint Petition is in the "public interest" in order to approve it under the Transfers Act. We disagree. When the General Assembly has intended to give the Commission authority to apply a public interest criterion in implementing a particular statute, it has expressly done so as part of that statute.[12] The General Assembly has not done so in the Transfers Act. In addition, the portion of § 56-90 stating that "the Commission shall make such order in the premises as it may deem proper and the circumstances require," does not create an *implicit* public interest criterion. Rather, the Transfers Act directs the Commission to make such order as it may deem proper and

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[12] *See, e.g.,* Va. Code §§ 56-235.5 B (iv), 56-481.1, and 56-481.2.

circumstances require, in order to be satisfied that adequate service to the public at just and reasonable rates will not be impaired or jeopardized by granting the prayer of the petition.

Commission precedent also does not create a statutory public interest criterion in the Transfers Act that does not otherwise exist. Specifically, the briefs include citations to a prior Commission decision under the Transfers Act, involving electric and natural gas utilities, which referenced the public interest.[13] In that decision, however, the Commission observed in *dicta* that the petition was in the public interest; the Commission did not find that the Transfers Act included an implicit public interest criterion that had to be met prior to approval thereunder. Indeed, the Commission has held that our statutory obligation under the Transfers Act is strictly limited as follows: "to find that 'adequate service to the public at just and reasonable rates will not be impaired or jeopardized by granting the prayer of the petition.' The law requires us to make the above finding, and no other."[14]

Finally, we agree with the Staff that "a merger between two telecommunications companies must be evaluated in light of the Commission's method of regulation of the carriers implicated (or their affiliates/subsidiaries) and give consideration to the markets in which they operate."[15] Moreover, as we explained in evaluating a prior telecommunications merger, in considering applications under the Transfers Act "our role is to be protective of rates and service quality that should already be in place."[16]

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[13] *Joint Petition of Dominion Resources, Inc., and Consolidated Natural Gas Co., for approval of agreement and a plan of merger under Chapter 5 of Title 56 of the Code of Virginia*, Case No. PUA-1999-00020, 1999 S.C.C. Ann. Rept. 169 (Sept. 17, 1999) ("*Dominion Resources I*").

[14] *Joint Petition of Bell Atlantic Corporation and GTE Corporation for approval of agreement and plan of merger*, Case No. PUA-1998-00031, 1999 S.C.C. Ann. Rept. 138, 142 (March 31, 1999) ("*Bell Atlantic I*") (quoting Va. Code § 56-90).

[15] Ex. 40, Part C at 1-2.

[16] *Bell Atlantic I* at 141.

Section 56-235.5:1 of the Code

Section 56-235.5:1 of the Code mandates as follows:

> The Commission, in resolving issues and cases concerning local exchange telephone service under the federal Telecommunications Act of 1996 (P.L. 104-104), this title, or both, shall, consistent with federal and state laws, consider it in the public interest to, as appropriate, (i) treat all providers of local exchange telephone services in an equitable fashion and without undue discrimination and, to the greatest extent possible, apply the same rules to all providers of local exchange telephone services; (ii) promote competitive product offerings, investments, and innovations from all providers of local exchange telephone services in all areas of the Commonwealth; and (iii) reduce or eliminate any requirement to price retail and wholesale products and services at levels that do not permit providers of local exchange telephone services to recover their costs of those products and services.

The Staff, Qwest, XO/Covad, and Consumer Counsel contend that the Commission must apply § 56-235.5:1 to this case and, as a result, must make a separate finding that the Joint Petition is in the public interest in order to approve it. We disagree.

As explained above, we do not make a separate public interest finding in order to grant a petition under the Transfers Act. In addition, § 56-235.5:1 does not create a public interest criterion in federal and state statutes that do not otherwise already contain such standard.[17] Section 56-235.5:1 also specifies that the Commission shall, "consistent with federal and state laws," consider certain items in the public interest, "as appropriate." We find that it is neither

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[17] For example, if the Commission is resolving an issue or a case concerning local exchange telephone service under a provision of the federal Telecommunications Act of 1996 that does *not* contain a public interest criterion, then § 56-235.5:1 of the Code does not amend the federal statute to insert a new, additional standard therein. Similarly, if the Commission is resolving an issue or a case concerning local exchange telephone service under Title 56 of the Code, § 56-235.5:1 does not amend all relevant provisions of Title 56 to insert a new, additional public interest standard therein. Certain participants also note that the Commission recently applied § 56-235.5:1 in establishing intrastate access rates. *See Petition of AT&T Communications of Virginia, LLC, for reductions in the intrastate carrier access rates of Verizon Virginia Inc. and Verizon South Inc.,* Case No. PUC-2003-00091, Final Order (Feb. 9, 2005). However, that was not a proceeding under the Transfers Act.

appropriate, nor consistent with state laws, to apply § 56-235.5:1's public interest standards to a Transfers Act case that does not include a separate public interest criterion.[18]

Deny Joint Petition

The Staff recommends that the Commission deny the Joint Petition without prejudice. Qwest asserts that the Joint Petition should be denied because Petitioners did not carry their burden of establishing that the requirements of § 56-90 have been satisfied. XO/Covad state that the Commission could deny the Joint Petition based on Petitioners' failure to meet their burden as required by the Code. Cavalier also asserts that the Commission should deny the Joint Petition.

We note that the Staff, Qwest, and XO/Covad also state that the Commission could approve the merger if we adopt the specific requirements requested by that party. Although we do not adopt all the conditions requested by these participants, we agree that the Joint Petition can satisfy the Transfers Act if additional requirements are imposed on the Petitioners. Indeed, any matters that would cause us to deny the Joint Petition have been addressed in the requirements ordered herein. Thus, we do not find that the Joint Petition must be denied.

In reaching this conclusion, we also find that Petitioners have met their burden of proof under the Transfers Act, subject to the requirements imposed by this Order Granting Approval. We note that this proceeding is not analogous to *Bell Atlantic I*, which was cited by participants throughout this case. In *Bell Atlantic I*, we dismissed the application without prejudice and afforded petitioners an opportunity to re-file a new application. In that case, however, we explained that petitioners did not provide any analysis in the application, did not supplement the application with testimony or analysis when given a chance to do so, and did not come forth with

[18] Finally, Petitioners argue in their post-hearing brief, at 14, that even if § 56-235.5:1 of the Code were applicable to this case, the Joint Petition satisfies the standards therein. Based on the record and the requirements attached to our approval herein, we agree.

evidence or information to justify approval after concerns were identified in the Staff report. Thus, the Commission concluded that the "'record,' such as it is in support of the petition, consists almost entirely of argument of counsel."[19] Contrary to *Bell Atlantic I*, the Petitioners have presented sufficient analysis and evidence in this proceeding to meet their burden of proof and to support our findings herein.

FCC and DOJ Review

The Staff recommends that the Commission defer final approval until after the FCC and DOJ complete their reviews. Alternatively, the Staff recommends that the Commission condition any approval subject to further review of any federal conditions. XO/Covad contend that the Commission should delay ruling until after the FCC and DOJ act so that the Commission can retain jurisdiction to oversee the effects of any remedies on the telecommunications market in Virginia and tailor Virginia-specific remedies accordingly. Our findings in this Order Granting Approval, however, are not dependent upon any potential federal condition that may or may not be imposed on the merger, or on any specific action by the FCC and/or DOJ. Thus, based on the record herein, we conclude that the requested deferral is not necessary for us to be satisfied that adequate service to the public at just and reasonable rates will not be impaired or jeopardized by granting the Joint Petition. Furthermore, if the FCC and/or DOJ direct Petitioners to take certain actions that require state approval under applicable Virginia law, Petitioners obviously must seek such approval forthwith.

Report of Action

The Staff recommends that Petitioners file a report of action with the Commission within 30 days of consummation of the merger. Petitioners state that they would not object to such an

[19] *Bell Atlantic I* at 141.

order. Petitioners shall file a report of action with the Clerk of the Commission within 30 days of consummation of the merger, subject to administrative extension by the Commission's Director of Public Utility Accounting.

Merger Savings

The Staff requests that Verizon VA, Verizon South, and MCImetro track merger costs and savings for a minimum of three years. Petitioners state that they would not object to this requirement. Verizon VA, Verizon South, and MCImetro shall track merger costs and savings for a minimum of three years and shall make the same available to the Staff upon request.

Affiliate Agreements

The Staff requests that Verizon VA and Verizon South file notice with the Commission of their affiliate agreements with MCImetro having an annual value in excess of $250,000 between Verizon VA or Verizon South and MCImetro for two years. Petitioners state that they would not object to providing such notice with the Staff once the list of affiliate agreements is no longer maintained on its web page until the two-year anniversary of the close of the transaction. We are not satisfied, however, that the web page listing is a reasonable substitute for the filing requested by the Staff. Thus, Verizon VA and Verizon South shall file notice with the Clerk of the Commission of their affiliate agreements with MCImetro having an annual value in excess of $250,000 between Verizon VA or Verizon South and MCImetro for two years after consummation of the merger.

Service Quality

The Staff requests that the Commission – until new service quality rules are adopted – require Verizon VA and Verizon South to respond to and resolve, when possible, Commission complaints within 10 business days. Consumer Counsel suggests that the Commission could impose an affirmative requirement that the merged companies at least maintain current levels of service quality. NTELOS asserts that the Commission should require Verizon to improve its wholesale billing process before approving the Joint Petition.

We find that these requirements are not necessary for us to be satisfied that adequate service to the public at just and reasonable rates will not be impaired or jeopardized by granting the Joint Petition. Based on the evidence in this case, we do not conclude that the merger is the cause of Verizon VA's and Verizon South's service quality problems as addressed during the hearing, or that the merger will exacerbate such problems to the extent that adequate service will be impaired or jeopardized.[20] Nonetheless, we share the Staff's serious concern over Verizon's continued service quality problems, and we accept Verizon Witness Woltz's personal assurance that he will see that the problems are corrected.[21] In addition, we recently issued an order establishing local exchange service quality rules and conclude that such rules also present a vehicle with which to address service quality issues that may arise after the merger.[22]

Directory Listings

Cox states that approval of the merger should be conditioned upon Verizon setting aside adequate personnel and resources to implement reforms in its directory listing process that may result from the Commission's investigation of this process in Case No. PUC-2005-00007. NTELOS asserts that the Commission should require Verizon to improve its directory listings before approving the Joint Petition.

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[20] In addition, there is no evidence in this case for the Commission to find that specific wholesale billing problems exist, or are related to the merger, as alluded to by NTELOS.

[21] Tr. 1168-1171, 1174.

[22] Ex Parte: Establishment of Rules for Service Quality Standards for the Provision of Local Exchange Telecommunications Services, Case No. PUC-2003-00110, Final Order (Sept. 30, 2005).

We find that these requirements are not necessary for us to be satisfied that adequate service to the public at just and reasonable rates will not be impaired or jeopardized by granting the Joint Petition. There is insufficient evidence in this case for us to conclude that the directory listing problems are related to the proposed merger or that the merger will exacerbate such problems to the extent that adequate service to the public at just and reasonable rates will be impaired or jeopardized. Moreover, we need not impose a requirement on our Transfers Act approval in order to implement any reforms that may result from the Commission's investigation in Case No. PUC-2005-00007.

ATM and Frame Relay

The Staff recommends that the Commission require Verizon VA and Verizon South to file to reclassify ATM and Frame Relay services as OLETS under their Alternative Regulatory Plan. The Staff is concerned that these services, which recently were deemed competitive by the Commission,[23] may no longer be competitive after the merger. Petitioners, however, assert in this case that there is no basis to find that competition will no longer effectively regulate the prices of ATM and Frame Relay after the merger. Petitioners also state that: (1) evidence relied upon by the Commission to find that Frame Relay was competitive included five contracts that Verizon VA lost to competitors, only one of which, the Covanet contract, was lost to MCI;[24] (2) in addition to Verizon VA and MCImetro, two other carriers – AT&T and Sprint – bid on

[23] *See Application of Verizon Virginia Inc., to Reclassify ISDN PRI Service (IntelliLinQ) and its associated Features, ATM Cell Relay Service and Frame Relay Services as Competitive under its Plan for Alternative Regulation*, Case No. PUC-2004-00141, Order Approving Reclassifications (Feb. 16, 2005); *Application of Verizon South Inc., to Reclassify ISDN PRI (IntelliLinQ) and its associated Features and Frame Relay under its Plan for Alternative Regulation*, Case No. PUC-2004-00142, Order Approving Reclassifications (Feb. 16, 2005).

[24] *See* Ex. 48.

that contract;[25] and (3) even if MCImetro had not been awarded the contract, AT&T or Sprint would have won before Verizon.[26]

We do not find, based on the record before us, that ATM and Frame Relay will no longer be competitive after the merger. This does not mean, however, that we could not find differently based on a different record. Specifically, ¶ D 4 of the Alternative Regulatory Plan provides an appropriate mechanism so that "Verizon Virginia, Verizon South, or any interested party may petition for the reclassification of a Verizon Virginia or Verizon South service." The Staff or any other interested party may initiate such a proceeding to reclassify ATM and Frame Relay as OLETS. We find that it is not necessary to require Verizon to make such a filing in order for us to be satisfied that adequate service to the public at just and reasonable rates will not be impaired or jeopardized by granting the Joint Petition.

Monitoring Long Distance Revenues

The Staff recommends that the Commission require Verizon's affiliates providing intrastate interLATA long distance service in Virginia to submit revenue monitoring information to the Staff consistent with that required by the Commission's IXC Rules (20 VAC 5-411-10 *et seq.*). We find that this requirement is not necessary for us to be satisfied that adequate service to the public at just and reasonable rates will not be impaired or jeopardized by granting the Joint Petition. No other resellers of long distance service are required to provide this information. Obtaining this limited data from one group of resellers will not provide sufficient information to fully evaluate market power. We also note, as alluded to by Petitioners, that after an appropriate

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[25] Tr. 1159.

[26] *Id.*

rulemaking proceeding the Commission could change its policy regarding the regulation and/or informational requirements of resellers of long distance service.

Infrastructure Investment

Consumer Counsel suggests that the Commission could impose a requirement that the merged company commit to a minimum level of investment in Virginia telecommunications infrastructure. Consumer Counsel, however, does not assert that we must impose such requirement in order to satisfy the Transfers Act.

We find that this requirement is not necessary for us to be satisfied that adequate service to the public at just and reasonable rates will not be impaired or jeopardized by granting the Joint Petition. The Staff testified that Verizon VA's and Verizon South's capital and maintenance expense spending has remained relatively constant for the last three calendar years (2002-2004) and that, assuming Verizon's financial resources remain sufficient, the Staff expects Verizon VA and Verizon South to continue to invest in a manner that ensures adequate service in their entire service areas.[27] Petitioners agree with the Staff and assert that Verizon's financial resources will be sufficient for this purpose after the merger. In addition, Verizon currently is continuing its significant investment in fiber-to-the-premise deployment in Virginia,[28] and Verizon Witness Woltz testified that such deployment will not divert resources that Verizon VA and Verizon South need to provide service in Virginia.[29] Finally, we note that, regardless of the merger, local exchange providers also must make necessary investments in order to meet the Commission's service quality standards.

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[27] Ex. 40, Part C at 16.

[28] Tr. 1171-1173.

[29] Woltz, Tr. 1173.

Alternative Regulatory Plan Rates

Consumer Counsel suggests that the Commission could impose a requirement that limits, for a period of time, future rate increases under Verizon's Alternative Regulatory Plan. Consumer Counsel, however, does not assert that we must impose such requirement in order to satisfy the Transfers Act.

We find that this requirement is not necessary for us to be satisfied that adequate service to the public at just and reasonable rates will not be impaired or jeopardized by granting the Joint Petition. In approving Verizon's Alternative Regulatory Plan, we concluded – as required by § 56-235.5 B of the Code – that such plan protects the affordability of basic local exchange telephone service as such service is defined by the Commission. Section 56-235.5 B provides an alternative or exception to § 56-235.2 A of the Code, which otherwise limits just and reasonable rates to the traditional rate base, rate of return formulation outlined in § 56-235.2 A. That is, as noted by the Staff, for telephone companies such as Verizon VA and Verizon South operating under an alternative regulatory plan, the ratemaking methodology by which just and reasonable rates are determined for basic local exchange telephone services has been replaced by the standard of affordable rates as provided in § 56-235.5 B.

Divestiture

Qwest argues that the Commission should deny the proposed merger unless the Petitioners agree to divest MCI's local overlapping facilities and customers in the Commonwealth. Qwest asserts that such divestiture is necessary to sustain the competitive pressure placed on Verizon in the wholesale loop and transport market and is critical to mitigating the harmful ramifications of the merger. Cavalier also argues that if the Commission approves the proposed merger, it should require the divestiture of MCI's current dedicated transport facilities in Virginia and MCI's current UNE-P customers in Virginia.

Although we do not perform (under the Transfers Act) the typical antitrust analysis that may be undertaken by the DOJ and/or FCC, the Commission has the authority to require divestiture if we find that such requirement is necessary to satisfy the Transfers Act.[30] However, based on (i) evidence regarding Verizon's and MCI's facilities and services in Virginia,[31] (ii) the Commission's continuing ability to regulate intrastate services under Virginia law, and (iii) our finding that the question of divestiture has been raised before the FCC and possibly DOJ,[32] we find that divestiture of MCI's overlapping facilities and customers in the Commonwealth is not needed for us to be satisfied that adequate service at just and reasonable rates will not be impaired or jeopardized by granting the Joint Petition. We emphasize that our analysis herein is independent of, and does not duplicate, the specific examination of potential divestitures that may be undertaken by the FCC and/or DOJ for purposes of interstate services.

<u>Stand-Alone DSL</u>

Qwest asserts that the Commission should deny the proposed merger unless the Petitioners agree that Verizon will offer to competitors in Virginia stand-alone DSL on

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[30] *See, e.g., Dominion Resources I* at 170-71.

[31] For example, MCI serves end-user buildings with its own fiber in Northern Virginia and Richmond, and these overlapping facilities are located in 12% of Verizon's wire centers in Virginia. Ex. 22, 23; Taylor, Tr. 432, 509. Other competitors have deployed fiber in Virginia where there is overlap. Taylor, Tr. 433, 508-511. There are an average of four additional competitors (*i.e.*, excluding Verizon and MCI) that have their own fiber facilities in Verizon wire centers where MCI has fiber as well. Ex. 23; Taylor, Tr. 433. Petitioners asserted that MCI has a relatively small percentage of the 4,000-plus different buildings lit by CLECs in Virginia. Exs. 5, 23; Taylor, Tr. 531-32, 1100. Petitioners also provided illustrations of self-reported data from some, but not all, fiber providers that depicted local fiber encompassing Richmond and Northern Virginia – specifically, illustrating Verizon wire centers with CLEC fiber-based collocation arrangements and CLEC fiber routes. Exs. 22 and 27. Petitioners also asserted that there are 15 known CLECs with fiber in the Virginia portion of the Washington, D.C., cluster and seven CLECs with known fiber in the Richmond cluster – *i.e.*, the two areas of the Commonwealth where Petitioners have overlapping facilities. Taylor, Tr. 433. In addition, Ex. 45S provides information on competitive lines in Virginia.

[32] *See, e.g.,* Ward, Tr. 710; Petitioners' post-hearing brief at 65.

reasonable terms. We find that this requirement is not necessary for us to be satisfied that adequate service to the public at just and reasonable rates will not be impaired or jeopardized by granting the Joint Petition.

A requirement by this Commission for the provision of stand-alone DSL on "reasonable terms" is too vague to be effective for the purpose requested herein. Moreover, there is insufficient evidence in this case for us to determine "reasonable" rates and terms in this regard. Petitioners also state that Verizon VA currently offers stand-alone DSL service to wholesale providers, who can then package it with their own retail services for sale to: (1) existing Verizon VA retail customers who port their voice service to a facilities-based carrier or wireless carrier and want to retain DSL service without the voice service; (2) retail customers who purchase voice service from a CLEC using a UNE-P replacement product under a wholesale contract; and (3) retail customers who do not currently have voice service with Verizon.[33] In addition, Verizon Witness Woltz assures that Verizon is working to implement stand-alone DSL for the remaining customers in the near future.[34]

Finally, we again note that our analysis herein is independent of, and does not duplicate, the specific examination of potential requirements for DSL that may be undertaken by the FCC and/or DOJ for purposes of interstate services.

Special Access / High Capacity Facilities

XO/Covad request that the Commission require Verizon's existing special access prices to be reset to earn no more than 11.25% and require Verizon to make available the existing special access plans with such recalculated pricing for both intrastate and interstate services.

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[33] *See, e.g.,* Petitioners' post-hearing brief at 72-74.

[34] Woltz, Tr. 160-164, 171-172.

Qwest asserts that the Commission should deny the proposed merger unless Petitioners agree that Verizon will continue to offer intrastate and interstate special access and private line or its equivalent to other carriers at the lowest rates currently offered by either Verizon or MCI. Qwest also states that the Commission should deny the proposed merger unless Petitioners agree that Verizon will not favor MCI or any other affiliate, or SBC/AT&T, with respect to the terms and conditions under which it provides special access or any other services, compared to the terms and conditions under which it offers those services to other competitors. We find that these specific requirements are not necessary for us to be satisfied that adequate service to the public at just and reasonable rates will not be impaired or jeopardized by granting the Joint Petition.

First, intrastate special access only represents approximately 5% of the special access provided by Verizon in Virginia. Qwest, for example, purchases no intrastate special access from Verizon in Virginia.[35] The Commission also currently regulates private line and intrastate special access as OLETS under Verizon's Alternative Regulatory Plan.[36] Based on (i) the limited amount of intrastate special access provided by Verizon in the Commonwealth, and (ii) our regulation of such and private line under the Alternative Regulatory Plan, we find that the requested requirements attendant to intrastate service are not necessary for approval under the Transfers Act.

Next, we note that respondents raise serious concerns, for example, that eliminating MCI as a separate competitor in the special access market may negatively impact competition and

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[35] *See* Ward, Tr. 680; Ex. 29.

[36] Petitioners assert that the Commission is prohibited from impacting intrastate special access rates in this proceeding, because such rates are part of the Alternative Regulatory Plan. We disagree. If required in order to satisfy the Transfers Act, the Commission has the authority to impact rates under an alternative regulatory plan as part of any merger approval. *See, e.g., Joint Petition of Bell Atlantic Corporation and GTE Corporation for approval of agreement and plan of merger*, Case No. PUC-1999-00100, 1999 S.C.C. Ann. Rept. 321, 323 (Nov. 29, 1999) ("*Bell Atlantic II*").

harm the wholesale market for interstate special access.[37] We recognize and share some of these same concerns, especially regarding mid-size business customers. Petitioners, on the other hand, submit evidence arguing that MCI is not a significant provider of special access and other services in Virginia and that MCI does not have any unique purchasing power.[38] Based on (i) evidence regarding Verizon's and MCI's facilities and services in Virginia, and (ii) our finding that questions regarding interstate special access and related services have been raised before the FCC and are part of a scheme of federal regulation,[39] we conclude that it is not necessary to condition our approval on the specific requirements requested by XO/Covad and Qwest. Consistent with our discussions above, we note that our analysis herein is independent of, and does not duplicate, the specific examination of these issues that may be undertaken by the FCC and/or DOJ for purposes of interstate services.

XO/Covad also request that the Commission require Verizon: (1) to make available high capacity loops, transport, and loop transport combinations at just and reasonable rates and under such terms and conditions to offset the alleged anti-competitive aspect of the merger and to promote competition; and (2) to match the rates that MCI has offered pre-merger for wholesale loop and transport facilities. In addition, Qwest asserts that the Commission should deny the proposed merger unless the Petitioners agree that Verizon will offer to competitors in Virginia any services or facilities that the post-merger entity purchases from other ILECs out-of-region, and at the same rates, terms, and conditions that the post-merger entity obtains from those ILECs out-of-region.

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[37] *See, e.g.,* Qwest's post-hearing brief at 9-20; XO/Covad's post-hearing brief, *passim.*

[38] *See, e.g.,* Petitioners' post-hearing brief at 32-36.

[39] *See, e.g.,* Taylor, Tr. 517; Ward, Tr. 680-81; Petitioners' post-hearing brief at 68-70.

We find that these specific requirements are not necessary for us to be satisfied that adequate service to the public at just and reasonable rates will not be impaired or jeopardized by granting the Joint Petition. Similar to our discussion of interstate special access, this conclusion is based on (i) evidence regarding Verizon's and MCI's facilities and services in the Commonwealth, and (ii) our finding that the matters involved in the requested conditions are part of a scheme of federal regulation.[40] This analysis is independent of, and does not duplicate, the specific examination of these issues that may be undertaken by the FCC and/or DOJ for purposes of interstate services.

Finally, although we do not adopt XO/Covad's and Qwest's specific requests, which apply to both Verizon and MCI, we find that a related requirement applicable only to MCI is necessary to satisfy the Transfers Act. There is significant evidence in this case on how the departure from the market of an independent MCI may ultimately impact the provision of local services to Virginia consumers, especially mid-size business customers that rely upon T1/DS1 and greater connectivity.[41] As a requirement of our approval, MCI must continue to offer to wholesale customers in Virginia its available intrastate and interstate special access, private line or its equivalent, and high capacity loop and transport facilities, without undue discrimination, at pre-merger terms and conditions and at prices that do not exceed pre-merger rates. Thus, existing and future wholesale customers of MCI in Virginia shall be entitled to purchase these services at like rates, terms, and conditions as those for comparable services pre-merger. The

[40] *See, e.g.,* Petitioners' post-hearing brief at 74-79.

[41] For example, there is evidence that: (1) MCI provides high capacity services to other carriers in the mid-size business market (Wood, Tr. 751); (2) one of the largest CLECs in Virginia, next to MCI and AT&T, purchases almost all of its non-Verizon high capacity transport from MCI (Ex. 34); (3) for one of the largest CLECs in Virginia, next to MCI and AT&T, in more than 90% of the central offices where such CLEC purchases high capacity fiber transport from carriers other than Verizon, there is no alternative competitive supplier to Verizon or MCI of such transport (Ex. 34; Wood, Tr. 833); and (4) MCI currently offers lower prices than Verizon for transported loop services (Wood, Tr. 751-52). *See also* XO/Covad's post-hearing brief at 35-39.

requirement ordered herein shall continue until the Commission issues an order finding that such is no longer necessary for us to be satisfied that removing MCI as an independent provider of these services will not impair or jeopardize adequate service to the public at just and reasonable rates. Petitioners or any interested person may initiate a case at any time requesting that the Commission remove this requirement.

In addition, we disagree with Petitioners' claim that the Commission lacks the authority to order such a requirement in this case. The Commission is not, for example, prohibited from conditioning Transfers Act approval on matters related to federal authority.[42] Furthermore, these intrastate and interstate wholesale services are used by competitive carriers to provide local service to Virginia consumers. In order to fulfill our duty under the Transfers Act to protect just and reasonable rates for Virginia consumers, the Commission may condition a merger by imposing requirements on intrastate and interstate services such as these. As previously explained, "our role is to be protective of rates and service quality that should already be in place."[43] In this regard, we find that to the extent other providers have relied upon MCI as a competitive alternative to Verizon for these services in Virginia, the above requirement is necessary to ensure the continuation of MCI's pre-merger rates, terms, and conditions in Virginia until we can conclude that the departure from the market of an independent MCI will not result

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[42] *See, e.g., Joint Petition of Cypress Communications Holding Co. of Virginia, Inc., Cypress Communications Holding Co., Inc., and Techinvest Holding Co., Inc., for approval of a transfer of control*, Case No. PUC-2004-00146, Order Granting Approval at 6 (Apr. 13, 2005) (Transfers Act approval "conditioned upon approval by the FCC, [Committee on Foreign Investment in the United States], DOJ, and [United States Department of Homeland Security]"); *Bell Atlantic II* at 324 (ordering that petitioners "shall not consummate the proposed merger unless the FCC authority to continue GTE South's interLATA local calling plans is received"); and *Joint Petition of Dominion Resources, Inc., and Consolidated Natural Gas Co., for approval of agreement and a plan of merger under Chapter 5 of Title 56 of the Code of Virginia*, Case No. PUA-1999-00020, 1999 S.C.C. Ann. Rept. 173, 174 (Sept. 27, 1999) (prohibiting petitioners from consummating the merger pending subsequent review by the Commission of pending SEC orders on the merger).

[43] *Bell Atlantic I* at 141.

in the potential harms identified in this proceeding. If Petitioners are correct that MCI's role in Virginia is limited for these purposes, then the required condition should have limited impact on the merged company.[44]

Interconnection Agreements

The Staff states that the Commission should require Verizon VA, Verizon South, and MCImetro to offer and purchase UNEs and/or interconnection arrangements through interconnection agreements (including interconnection agreements filed with the Commission pursuant to § 252 of the Telecommunications Act of 1996), and require the companies to file other commercial interconnection agreements between the companies (outside § 251 obligations) with the Commission. Consumer Counsel also suggests that the Commission could impose a requirement that any commercial contract affecting interconnection be filed with the Commission. In response, Verizon states that it intends to provide interconnection and/or network elements required under § 251 to MCImetro in Virginia pursuant to interconnection agreements entered into under §§ 251 and 252. In addition, Verizon states that if it removes the commercial agreements from its web page, or otherwise takes the web page down, Verizon will make the commercial agreements available to the Staff. Similar to our finding regarding affiliate agreements, we are not satisfied that the web page listing is a reasonable substitute for the filing requested by the Staff. Thus, Verizon VA, Verizon South, and MCImetro shall: (1) provide and purchase interconnection and/or network elements required under § 251 in Virginia pursuant to interconnection agreements entered into under §§ 251 and 252; and (2) file other commercial interconnection agreements between the companies (outside § 251 obligations) with the Clerk of the Commission.

[44] Indeed, Petitioners argue that MCImetro is not a significant provider of wholesale high capacity services. Petitioners' post-hearing brief at 22.

Next, the participants propose a series of conditions that would affect the operation of interconnection agreements. For example:

- Qwest asserts that the Commission should deny the proposed merger unless Petitioners agree that Verizon will give its wholesale customers in Virginia a "fresh look" right to terminate their contracts with Petitioners without termination liability;

- XO/Covad request that the Commission require Verizon to reinitialize all existing interconnection agreements – and entitle CLECs to take a "fresh look" at existing un-expired interconnection agreements in order to terminate any non-compliant agreements without penalty;

- XO/Covad request that the Commission limit any interconnection agreement arbitrations to those changes of law arising out of the FCC's Triennial Review Remand Order or TRRO;

- XO/Covad request that the Commission establish uniform contract amendment provisions that will apply to new interconnection agreements;

- XO/Covad request that the Commission require Verizon to enter into interconnection agreements with three- to five-year terms;

- Cox states that the Commission should require a three-year extension of existing interconnection agreements – with CLECs retaining the unilateral right to terminate such agreements any time within that three-year extended period;

- Cox states that the Commission should require Verizon to permit CLECs to adopt interconnection agreements anywhere within the Verizon footprint; and

- Consumer Counsel suggests that the Commission could impose a requirement that Verizon make any non-price terms of any interconnection agreement between Verizon and MCI available to any CLEC.

We find that these requirements are not necessary for us to be satisfied that adequate service to the public at just and reasonable rates will not be impaired or jeopardized by granting the Joint Petition. This conclusion is based on (i) evidence regarding Verizon's and MCI's facilities and services in the Commonwealth, (ii) Petitioners explanation that Verizon VA, Verizon South, and MCImetro will, and must, honor their contracts with wholesale customers after consummation of the merger, and, similar to discussions above, (iii) our finding that matters involved in the requested conditions are part of a scheme of federal regulation. Our analysis herein is independent of, and does not duplicate, the specific examination of these issues that may be undertaken by the FCC and/or DOJ for purposes of interstate services.

Section 251 UNEs / Section 271 UNEs

The Staff recommends that the Commission require Verizon VA and Verizon South to modify their high capacity UNE impairment wire center analysis (and corresponding availability) required by the FCC in its TRRO to reflect MCI as a non-qualifying fiber-based collocator in Virginia wire centers. In addition, XO/Covad request the following requirements related to §§ 251 and 271 UNEs:

- that the Commission require Verizon to recalculate the wire center locations where § 251 high capacity loops, transport, and dark fiber UNEs are provided, treating AT&T and MCI as non-qualifying collocators;
- that the Commission specify a pricing process for UNEs to replace the time consuming process to identify forward looking costs;
- that the Commission require rates for § 251 UNEs be capped at the rates in effect as of July 1, 2005;
- that the Commission require enforcement of Verizon's obligation to provide access to loops and transport regardless of whether impairment exists and § 251 UNEs are required;
- that the Commission require Verizon to waive the cap of ten on the number of DS1 loops and transport circuits that can be ordered to a building or a particular route;
- that the Commission require Verizon to offer DS1 and DS3 loops and transport as § 271 UNEs in all locations where high capacity loop and transport UNEs are no longer provided under § 251; and
- that the Commission create transition pricing rules for UNEs that Verizon and other ILECs are required to provide under § 271.

We find that these requirements are not necessary for us to be satisfied that adequate service to the public at just and reasonable rates will not be impaired or jeopardized by granting the Joint Petition. This conclusion is based on (i) evidence regarding Verizon's and MCI's facilities and services in the Commonwealth, and (ii) our finding that matters involved in the requested conditions are part of a scheme of federal regulation. Our analysis herein is independent of, and does not duplicate, the specific examination of these issues that may be undertaken by the FCC and/or DOJ for purposes of interstate services.

Motion to Strike E911 Data

Finally, we deny XO's motion to strike from the record the E911 data used by Petitioners in this proceeding. Petitioners note that XO's motion was made for the first time during the hearing, even though Petitioners first disclosed their reliance on such information through discovery responses available in June 2005. More importantly, XO provides no authority to support its requested remedy. XO asserts, for example, that Verizon's use of such data violates interconnection agreements and may represent a criminal conversion. Even if correct, XO cites no authority to establish that the specific information is incompetent, inaccurate, unreliable, or otherwise inadmissible. Finally, we note that we need not rely on the E911 data to support our conclusions herein; *i.e.*, there is evidence in this record from other sources regarding CLEC lines that we relied upon for our findings in this Order Granting Approval.[45]

Accordingly, IT IS HEREBY ORDERED THAT:

(1) Pursuant to §§ 56-88.1 and 56-90 of the Code of Virginia, the Joint Petition is granted subject to the requirements established in this Order Granting Approval.

(2) It is further ordered as follows.

[45] *See, e.g.,* Ex. 45S. In addition, Cavalier's motions to strike and to initiate an investigation also relate to the use of E911 data, which we have ruled on for purposes of this proceeding in response to XO's motion to strike this same information. We do not find good cause to grant Cavalier's untimely motion for leave to intervene.

(a) Petitioners shall file a report of action with the Clerk of the Commission within 30 days of consummation of the merger, subject to administrative extension by the Commission's Director of Public Utility Accounting.

(b) Verizon VA, Verizon South, and MCImetro shall track merger costs and savings for a minimum of three years and shall make the same available to the Staff upon request.

(c) Verizon VA and Verizon South shall file notice with the Clerk of the Commission of their affiliate agreements with MCImetro having an annual value in excess of $250,000 between Verizon VA or Verizon South and MCImetro for two years after consummation of the merger.

(d) MCI shall continue to offer to wholesale customers in Virginia its available intrastate and interstate special access, private line or its equivalent, and high capacity loop and transport facilities, without undue discrimination, at pre-merger terms and conditions and at prices that do not exceed pre-merger rates. Existing and future wholesale customers of MCI in Virginia shall be entitled to purchase these services at like rates, terms, and conditions as those for comparable services pre-merger. The requirement ordered herein shall continue until the Commission issues an order finding that such is no longer necessary for us to be satisfied that removing MCI as an independent provider of these services will not impair or jeopardize adequate service to the public at just and reasonable rates.

(e) Verizon VA, Verizon South, and MCImetro shall: (i) provide and purchase interconnection and/or network elements required under § 251 in Virginia pursuant to interconnection agreements entered into under §§ 251 and 252; and (ii) file other commercial interconnection agreements between the companies (outside § 251 obligations) with the Clerk of the Commission.

(3) The remedies for violation of any of the Commission's orders herein include the penalties set forth in § 12.1-13 of the Code.

(4) XO's motion to strike the E911 data from the record is denied.

(5) Cavalier's motion for leave to intervene is denied.

(6) This matter is dismissed.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the State Corporation Commission, c/o Document Control Center, 1300 East Main Street, First Floor, Tyler Building, Richmond, Virginia 23219.

A True Copy
Teste: Joel H. Peck
Clerk of the
State Corporation Commission

Painter, Michelle
Senior Attorney
MCI
22001 Loudoun County Pkwy

Ashburn VA 20147

Karp, Jason R.
Esquire
Kelley Drye & Warren LLP
Suite 1200
8000 Towers Crescent Drive
Vienna VA 22182

Edmonds, Andrea P.
Esquire
Kelley Drye & Warren LLP
Tysons Corner - Ste 1200
8000 Towers Crescent Dr
Vienna VA 22182

Beuttel, Ashley C.
Asst Attorney General
Office of Attorney General
Division of Consumer Counsel
900 E Main St Fl 2
Richmond VA 23219

Pulley, Lydia R.
Vice President, Secretary &
General Counsel
Verizon Virginia Inc.
600 E Main St Ste 1100
Richmond VA 23219-2441

Nolte, JoAnne L.
Esquire
The Conrad Firm
Suite 204
1520 West Main Street
Richmond VA 23220

Browder, C. M.
Sr. Assistant Attorney General
Office of the Attorney General
Division of Consumer Counsel
900 East Main St., 2nd Fl.
Richmond VA 23219

Goodman, Steven H.
Director-Regulatory Affairs
Ntelos Inc.
1154 Shenandoah Village Dr

Waynesboro VA 22980

Page, Eric M.
LeClair Ryan P.C.
4201 Dominion Blvd Ste 200

Glen Allen VA 23060

Lynch, III, Donald F.
Esquire
Cavalier Telephone, LLC
2134 W Laburnum Ave

Richmond VA 23227-4342

Perkins, Stephen T.
Esquire
Cavalier Telephone, LLC
1319 Ingleside Rd.

Norfolk VA 23502-1914

Robb, Cliona M.
Esquire
Christian & Barton, L.L.P.
909 E Main St., Suite 1200

Richmond VA 23219-3095

Pierce, Kiva B.
Esquire
The Conrad Firm
Suite 204
1520 West Main Street
Richmond VA 23220